

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Charles C. Maddox, Esq.
Inspector General



March 20, 2002

The Honorable Anthony A. Williams
Mayor
District of Columbia
The Wilson Building
1350 Pennsylvania Avenue, N.W., 6th Floor
Washington, D.C. 20004

Dear Mayor Williams:

In his February 15, 2002, e-mail to various District entities, Erik S. Gaull, Director, Operational Improvements Division, Office of the Deputy Mayor/City Administrator, announced a Notice of Proposed Rulemaking by the Department of Consumer and Regulatory Affairs (DCRA) on Towing Regulations. That notice, published in the D.C. Register, appeared on pages 1279-1295. The e-mail also indicated that the period of public comment on these proposed regulations would end on March 20, 2002.

This Office has thoroughly reviewed the proposed towing regulations issued by DCRA and compared them to the recommendations made in our Report of Investigation issued on March 30, 2001. Based on that review, we have identified the following specific sections of the proposed regulations where we believe that language enhancements would serve to further clarify and strengthen the proposed regulations:

1. Section 402: Authority to Tow: Public Tows

402.1 [A] private towing business must be in full compliance with these regulations and must agree in writing to participate in a towing rotation system to be administered by the DPW towing center.

- **Response:** The lack of compliance enforcement was a point of concern in our report. One agency should be responsible for compliance enforcement, be it DPW or the Department of Consumer and Regulatory Affairs. Furthermore, procedures for oversight must be established.

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2. Section 404: Licensing of Towing Businesses, Tow Trucks, Tow Truck Operators, and Towing Service Storage Lots

404.3 [T]he Director is authorized to conduct any investigation which the Director deems necessary to determine the applicant's trustworthiness and other qualifications to perform towing services without detriment to the public.

- **Response:** It should be a requirement that an investigation is conducted to determine the applicant's trustworthiness. Furthermore, in light of the recent FBI arrests of tow truck operators involved in property theft, drugs, and carrying concealed weapons, the regulations should include the recommendations made in our report, Exhibit H, § 401:1(3) as set forth below.

Submitted to a background investigation resulting in a determination by the Director that:

- (a) The applicant neither possesses a suspended or revoked driver's license, nor has its towing license previously been revoked by action of the Director or any other jurisdiction within two (2) years of the date of application, or has outstanding and unsatisfied civil penalties imposed due to violations of this ordinance or a similar ordinance of another jurisdiction.
- (b) The applicant has neither pled nolo contendere, nor pled guilty or been convicted of: a crime relating to motor vehicles or any crime designated as a felony; any crime involving the sale or possession of controlled substances as defined by the District of Columbia statutes, unless the civil rights of such individual or applicant have been restored; or in the case of conviction of the crime relating to motor vehicles, that such person has successfully completed all sentences of incarceration, probation, required rehabilitation activities, and payments of all fines and penalties imposed.
- (c) Each corporate or partnership applicant is qualified under the laws of the District of Columbia to do business under the trade name or names under which it has applied for a license.
- (d) No fraud or willful or knowing misrepresentation or false statement was made in the application.

- (e) No judgment against the applicant arising out of the activity of recovery, towing or removing a vehicle or providing storage in connection therewith remains unsatisfied, unless a stay or reversal of the judgement is procured through the courts.

3. Section 405: Application for Towing Business Licenses and Endorsements

405.1 (e) The location and description of the space to be used for the storage of towed vehicle, together with a copy of a deed, lease, or other proof of the right to use the space as a towing service storage lot, and a valid certificate of occupancy permit...

- **Response:** One issue outlined in our report was that tow companies lease storage spaces throughout the District. This provides for storage in more than one MPD sector when the MPD's rotation list is utilized. Upon issuance of the storage license, these spaces are closed to all other potential users. Exhibit H of the our report recommended the following:

404.4: Any discontinuance of the availability of the storage or repair facility to the licensee during the license period shall be reported in writing to the Director at least ten (10) days prior to the expiration of the availability.

404.5: The license shall be suspended during any period of unavailability of the storage or repair facility and may, during the period of suspension, be repossessed by the Director.

404.6: Any license suspended under § 404.5 may be reissued without charge for the remainder of the license period when written evidence of availability to the applicant of a substitute storage or repair facility is supplied to the Director, and the Director has approved of the location after an inspection.

4. Section 407: Towing Service Storage Lots and Repair Facilities

407.3 The log must contain the towing control number, if a public tow, the date and time the vehicle arrived at the towing service storage lot, a description of any damage to the vehicle when brought to the storage lot, and the date (s) *and manner in which notification was provided to the registered owner*. The log shall be available at all times to police officers and DCRA investigators.

- **Response:** The issues of responsibility for notification and the method of notification were not specifically addressed in our report. Section 407.3 indirectly states that the tow company will assume this responsibility; however, nothing further is mentioned. As indicated in Exhibit H of our report, the tow company should be responsible to notify vehicle owners when they are in possession of someone's vehicle. Based on a method used in the state of Florida, and also the District of Columbia Abandoned and Junk Vehicle Division, DPW, Exhibit H §§ 411.1 and 411.2 of, the following was suggested:
 - A Tow Company shall send a notice by certified mail, within 5 working days after a vehicle was taken into custody, to the last known address of the owners of record of the vehicle and any lien holders that the vehicle has been towed, giving the name and location of the tow company. The notice shall describe the year, make, model, and serial number of the vehicle.
 - A Tow Company shall within 10 days of towing a vehicle publish notice in a newspaper of general circulation in the District once a week for two consecutive weeks, which notice shall give the year, make, model, and serial number of the vehicle and the location and company name.

It is our opinion that since the tow companies financially benefit from tows, they should be responsible for notification. This responsibility will also benefit the tow company. In the event that a vehicle owner claims that they were not notified of a tow and subsequently refuses to pay the storage charge, the tow company will have a record of notification.

5. Section 408: Payment for Services

408.7 The maximum amount that may be charged for storage in a towing service storage lot is \$25 for any 24-hour period or portion thereof, calculated from the beginning of the first 24-hour period after the time the vehicle enter the towing service storage lot.

- **Response:** A concern addressed in our report was that tow companies have charged storage fees for an entire day even when the vehicle was on the storage lot for less than 30 minutes. As stated in Exhibit H § 407.1 (8) Storage Charges: Storage charges are by 24-hour increments and not by calendar days. There is no charge for the first 6 hours of storage.

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6. Section 409: Issuance and Display of Tow Truck License and Endorsement

This section deals specifically with the application, approval and issuance of tow truck licenses. While this Office has no concerns with 409.1 through 409.4 of the proposed regulations, we recommend adding an additional section (409.5) to accommodate the suggestions set forth in the response below.

- **Response:** Because there was an issue reported in the report where a MPD officer transferred ownership of a tow truck license to his daughter, Exhibit H § 405 recommended the following:
 - It shall be unlawful for any licensee to alter or transfer ownership of any license. If a tow truck is destroyed or sold, the licensee must remove the license and surrender the license to the Director.

As cited in our report, tow company owners contracted with property owners giving the tow companies authority to act on their behalf of the property owners to tow unauthorized vehicles.

This was a matter of serious concern. Exhibit H, § 409.12 addressed this issue and recommended:

- It shall be unlawful for any tow truck worker to tow a vehicle without the “express instruction” of a police officer, property owner or duly authorized agent of the property owner, or the vehicle owner or the authorized driver. Express instruction shall mean a clear, definite and explicit request made in writing to recover, tow, remove, or store a specific and individual vehicle which is disabled, abandoned, parked without authorization, or whose operator is unable or unwilling to remove the vehicle. A duly authorized agent of the property owner shall not include the tow truck worker, owner, or any persons with interest in the tow company. Every request must indicate the date and time of the instruction and must be signed by the police officer, the property owner, or agent, or the vehicle owner or authorized driver in the presence of the person providing the requested service. No such instruction shall be considered to have been given; 1) by the mere posting of the notice as required by the preceding parts of this section; 2) by virtue of the mere terms of any contract or agreement between a person providing towing services and a property owner; 3) when the instruction occurs in advance

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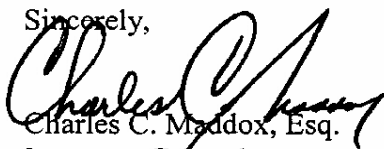
of the actual unauthorized parking of the vehicle; or 4) where the instruction is general in nature and unrelated to specific, individual and identifiable vehicles which are already parked without authorization.

- Each licensee must enter into a written contract with every owner of private property that authorized the licensee to tow vehicles from its property. This written contract shall include the names and titles of all persons who are authorized to provide express authorization to the licensee to remove, recover or tow any vehicle from its property. Only the persons referenced in the contract or by subsequent addendum to the written contract have the authority to provide such express authorization to the licensee. The licensee must keep on file each contract that is in effect with each property owner, or that was terminated within the previous twelve (12) months. The Director, law enforcement officers, and the owner of the vehicle towed by the licensee may inspect and request a copy of any and all such contracts from the licensee during business hours.

As a final note, in order to charge someone under D.C. Code § 22-2514, False Statements, the statement in question must be in writing. Even in instances where the statement is in writing, applications for licenses and operating permits should contain a specific written warning that falsifying such documents would constitute a violation of D.C. Code § 22-2514. It appears that the proposed regulations overlooked this important addition. Exhibit H, § 402.1(k) recommended that a warning be added to the application form in order to eliminate any ambiguity as to whether an applicant understands the obligation to abide by the provisions of this chapter and the laws of the District of Columbia. In an effort to continue to monitor developments in finalizing towing regulations for the District, this Office would appreciate receiving a copy of the final regulations.

If you would like to discuss this matter further, please call me or David M. Bowie, Assistant Inspector General for Investigations, at (202) 727-1039.

Sincerely,


Charles C. Maddox, Esq.
Inspector General

CCM/km

cc: See Distribution List

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